

### **Remarks**

Claims 7-11, 21, 22, 32, 38-40, 44-46, and 49 were amended and care has been exercised to avoid the introduction of new matter.

### **Rejections**

Claims 7-11 and 21-50 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 7-11 and 21-50 were rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as being indefinite. Claims 7-11 and 21-50 were rejected under 35 U.S.C. §102(e) as being anticipated by Atkinson et al. (U.S. 2001/0039528 A1). Claims 7-11 and 21-50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fisher et al. (U.S. 5,835,896) in view of Sheehan et al. (U.S. 2001/0049647 A1).

Reconsideration of the application is requested.

### **35 U.S.C. §101 Rejections**

Claims 7-11 and 21-50 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Claims 7-11, 21, 22, 32, 38-40, 44-46, and 49 have been amended to include positive recitation of technology in the body of the claims. Applicant submits that claims 23-31, 33-37, 41-43, 47-48, and 50 are patentable by virtue of their dependency from claims 22, 32, 38, and 44 which are believed to be patentable for reasons set forth above.

Withdrawal of the rejections under 35 U.S.C. §101 to claims 7-11 and 21-50 is requested.

### **35 U.S.C. §112, 2<sup>nd</sup> Paragraph Rejections**

Claims 7-11 and 21-50 were rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as being indefinite.

In view of the Examiner's comments and the amended claims, withdrawal of the rejections under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph of claims 7-11 and 21-50 is requested.

### **35 U.S.C. §102(e) Rejections**

Claims 7-11 and 21-50 stand rejected under 35 U.S.C. §102(e) as being anticipated by Atkinson et al. (U.S. 2001/0039528 A1) ("Atkinson").

The Examiner asserts that "Atkinson '528 discloses the claimed invention including a first plurality of bidders (the bidders round 1) and a second plurality of bidders (the bidders of round 1 who make it to round 2)" and discloses "how each bidder may have their bid considered one at a time." Applicant believes the present claims are not anticipated by Atkinson and requests reconsideration of the rejection.

Applicant submits that the "rounds" that the Examiner refers to in Atkinson are two auction rounds, and a request for quote round with an auction round, which are different from what the Applicant claims. The Applicant does not claim two auctions or a request for quote and an auction. Further, Applicant believes that Atkinson does not disclose "how each bidder may have their bid considered one at a time" and that this is different from "designating, in turn, each one of the second plurality of bidder computers as a select bidder computer."

Regarding the Examiner's first assertion, Applicant submits that Atkinson discloses an allocation of an award among highest ranked bidders based on a formula or a rule and a first round auction followed by a second round auction. Various processes are illustrated in Atkinson Figs 5, 6, 7, and 8. For example, a request for quote (RFQ) (not an auction) is performed, and then auctions involving an award, or an auction with multiple awards. With some of the processes, an auction round uses a rule to determine who participates in a subsequent auction round. Each example involves one or more auctions and a prior RFQ round.

Atkinson also discloses a "sponsor conducting more than one auction to base the conduct of a subsequent auction on one or more occurrences in a

previous auction [0067]." The "two rounds" disclosed in Atkinson requires that the "subsequent round of [the] auction [be] conducted in accordance with a rule, that is defined prior to a preceding round of auction [0067]" Atkinson further discusses how "it is beneficial to award contracts to multiple bidders in multiple rounds," which are multiple auctions [0069].

Atkinson's discussion of Fig. 5 mentions a second auction, but in this case the "first auction" is really a request for quote (RFQ); i.e., the second auction is in response to a request for quote (RFQ) submitted to the suppliers of the goods or services by the sponsor [0070]. Atkinson further explains that the "RFQ" is provided to potential bidders" and that "each potential bidder that desires to participate in the auction may then respond to the RFQ [0070]." Atkinson also discusses how a first round auction involving mailing a bid in a sealed envelope to a purchasing sponsor and a second round auction consisting of the qualifying bidders from the first round, at [0075].

Regarding the Examiner's second assertion, the Applicant submits that Atkinson does not disclose "how each bidder may have their bid considered one at a time" and that this is different from "designating, in turn, each one of the second plurality of bidder computers as a select bidder computer."

Referring to Figs. 5 and 6 of Atkinson, after a contract is awarded (212) it is determined whether to have an additional round of bidding (218) in another auction (210). These examples describe multiple auctions. In Figs. 7 and 8, after a bid is accepted (420), it is determined whether the auction should be closed (426) and if not, another bid is accepted (420). As stated above, the Applicant is not claiming multiple auctions. Further, these examples describe auctions with the ability to accept multiple bids. The examples in Atkinson have a sponsor waiting for bids to be made. Those who make a bid are considered and those who do not make a bid are not considered. The sponsor does not "designate, in turn, each one of the second plurality" of bidders, as claimed by the Applicant.

Applicant believes the rejection under 35 U.S.C. §102(e) is traversed on grounds that Atkinson does not disclose each of the elements recited in each of

the independent claims 7, 22, 32, 38, and 44. In particular, Atkinson fails at the very least to disclose:

Claim 7

“designating, in turn, each one of the second plurality of bidder computers as a select bidder computer until one of an acceptance of either a bid from one of the second plurality of bidder computers or a rejection of all bids from each of the second plurality of bidder computers occurs;

for each select bidder computer,

    sending one or more bids from the select bidder computer to the auctioneer computer;

    sending one or more auctioneer bids from the auctioneer computer to the select bidder computer; and

    receiving an agreement or a termination of bidding from one of the auctioneer computer or the select bidder computer.”

Claim 22

“negotiating between the first computer and a bidder computer associated with the bid one or more terms of the product terms or the service terms.”

Claim 32

“negotiating between the first computer and a first bidder computer or a second bidder computer associated with the first bid or the second bid one or more terms of the product terms or the service terms.”

Claim 38

“negotiating between the computer and the auctioneer computer one or more terms of a product terms or a service terms.”

Claim 44

"negotiating one or more terms of the product terms or the service terms between the auctioneer computer and a bidder computer associated with the selected bid."

Claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 are dependent claims that depend on claims 7, 22, 32, 38 and 44 and consequently incorporate the limitation of their respective independent claims. Applicant submits that claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 are patentable by virtue of their dependency from their respective independent claims which are believed to be patentable for reasons set forth in the discussion above. Accordingly, favorable consideration of claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 is requested.

#### **35 U.S.C. §103(a) Rejection**

The Examiner rejects claims 7-50 under 35 U.S.C. §103 (a) as being unpatentable over Fisher et. al. (U.S. 5,835,896) ("Fisher") in view of Sheehan et. al. (U.S. 2001/0049647 A1) ("Sheehan").

The Examiner asserts that Fisher "discloses the claimed invention including initiating and concluding the auction." The Examiner also asserts that Sheehan "teaches the use of a final bidders set (i.e. various auction rounds)."

The Fisher patent discloses various standard and known auction and trading arrangements that are implemented by software processes, such as electronic auctions held over the Internet using electronic mail (column 2, lines 11-12), electronic means for prospective buyers to post offers to buy a given security at a specific price (column 3, lines 55-56), a multi-bidder, interactive auction without using a human auctioneer (column 6, lines 4-5), and a "Dutch Auction" (column 10, line 30).

What the Sheehan patent application discloses is a multi-round auction arrangement that has a pre-auction and a public auction (page 2, paragraph 19). The multi-round auction has a first round auction, which is limited to those who know of the auction and who are qualified, and a second round auction which is open to the public (page 2, paragraph 23). Sheehan discuss two auction rounds.

At best, combining Fisher and Sheehan results in an arrangement capable of providing multi-round auctions limited to those who know of the auction and who are qualified and a second round auction, which is open to the public; the multi-round auction organized in a standard and known auction or trading arrangement. The combination, at best, results in two auction rounds. The Applicant does not claim two auctions.

Regarding the Examiner's point 21 in the Examiner's Response to Arguments, the Examiner admits that Fisher and Sheehan alone or in combination do not explicitly disclose "designating, in turn, each one of the second plurality of bidders as a select bidder ...." The Examiner asserts that "because each bid must be processed, when that bid is processed, it is inherently said to be the 'select bidder.'" Even if this statement was true, Fisher and Sheehan alone or in combination do not inherently disclose "designating, in turn, each one of the second plurality of bidders as a select bidder ...." In prior art auctions, auctioneers or sponsors wait for bids from participants. Those who do not bid are not considered. The auctioneers or sponsors do not "designate, in turn, each one of the second plurality" of bidders, as claimed by the Applicant.

Applicant believes the rejection under 35 U.S.C. §103(a) is traversed on grounds that Fisher and Sheehan do not disclose alone or in combination each of the elements recited in each of the independent claims 7, 22, 32, 38, and 44. In particular, Fisher and Sheehan, alone or in combination, explicitly or implicitly, fail at the very least to disclose:

Claim 7

"designating, in turn, each one of the second plurality of bidder computers as a select bidder computer until one of an acceptance of either a bid from one of the second plurality of bidder computers or a rejection of all bids from each of the second plurality of bidder computers occurs;

for each select bidder computer,

sending one or more bids from the select bidder computer to the auctioneer computer;  
sending one or more auctioneer bids from the auctioneer computer to the select bidder computer; and  
receiving an agreement or a termination of bidding from one of the auctioneer computer or the select bidder computer.”

Claim 22

“negotiating between the first computer and a bidder computer associated with the bid one or more terms of the product terms or the service terms.”

Claim 32

“negotiating between the first computer and a first bidder computer or a second bidder computer associated with the first bid or the second bid one or more terms of the product terms or the service terms.”

Claim 38

“negotiating between the computer and the auctioneer computer one or more terms of a product terms or a service terms.”

Claim 44

“negotiating one or more terms of the product terms or the service terms between the auctioneer computer and a bidder computer associated with the selected bid.”

Claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 are dependent claims that depend on claims 7, 22, 32, 38 and 44 and consequently incorporate the limitation of their respective independent claims. Applicant respectfully submits that claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 are patentable by virtue of their dependency from their respective independent claims which are believed to be patentable for reasons set forth in the discussion above. Accordingly,

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favorable consideration of claims 8-11, 21, 23-31, 33-37, 39-43, and 45-50 is respectfully considered.

In light of the above amendments and remarks, the Applicant believes that all rejections have been overcome. Reconsideration and allowance of claims 7-50 are respectfully requested.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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